

Remarks

Claims 1, 6, 8, 11, 13 and 19 are pending. All pending claims have been rejected under Section 102(e) as being anticipated by Toyoda (6229884). The Office asserts that a source computer receiving an email "representing" an email transmission failure meets the determining and resuming or restarting limitations in the claims. This assertion is not correct.

Claim 1 recites determining if electronic scan data is present on a storage device after an interruption in electrical power and, if the electronic data is determined to be present on the storage device after the interruption in electrical power, resuming the transmission of the electronic data to an e-mail server or restarting the transmission of the electronic data to the e-mail server. Claims 8 and 13 contain similar limitations.

Toyoda teaches that "in the event that the transmission of an e-mail from the electronic mail system to the destination has failed, a responsive e-mail representing the transmission failure can be received by the e-mail computer 9A." Toyoda column 10, lines 25-29 and step S104 in Fig. 26.

Toyoda does not teach that the cause of the transmission failure is an interruption in electrical power. Hence, Toyoda does not, indeed cannot, teach making any kind of determination about scan data after an interruption in electrical power.

Even if it is assumed that the failure of the email transmission in Toyoda is due to an interruption in electrical power, nowhere in the cited passage (or anywhere else in Toyoda) is there any teaching or even any suggestion that a determination is made that the scan data is still present on the storage device (storage unit 4 in Toyoda).

Furthermore, Toyoda is completely silent as to what happens, if anything, after computer 9A receives an email representing the transmission failure. While one might speculate that the email is resent or even that the email is resent with scan data still stored on storage unit 4, any such speculation cannot support a finding of anticipation under Section 102 (or a finding of obviousness under Section 103).

These limitations in Claim 1 are also not inherent in the teachings of Toyoda. To establish inherency, the Office must show that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. MPEP § 2112, paragraph IV. The Office has made no such showing. In fact, the transmission failure in Toyoda need not result from an interruption in electrical power. A determination that the scan data is still present on the storage device need not be made – the scan data could simply be recreated. And, the transmission need not be resumed or restarted – the email could be abandoned or a new email generated.

If the Office disagrees with Applicants' analysis, it is respectfully requested to specifically point out *and explain* those passages in Toyoda that might reasonably be interpreted as teaching these limitations. Absent such a showing, the rejection of all pending claims should be withdrawn.

The foregoing is believed to be a complete response to the outstanding office action.

Respectfully submitted,

/Steven R. Ormiston/

Steven R. Ormiston
Reg. No. 35,974
208.433.1991 x204